

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAN H. ENG, TAN F. LAM,)
KWOK C. TANG, JUN Q. CHAN,)
KAM C. HO, XIAO Z. ZHANG,) 07 Civ 3909
YAT C. CHAN, MING HO, RONG J.)
CHEN, JIAN Z. LUO, LE Y. CHEN,)
JIAN B. YAN, SU C. JIANG,)
XIU H. JIANG, XIU LIN, TAK S.)
CHENG, SHU C. HUANG, MEI J.)
HUANG and OY K. KWAN,)

Plaintiffs,)

vs.)

THE NICE RESTAURANT, INC.,)
BEN H. TOM, MEE MEE TOM a.k.a.)
MEE MEE M. THOM a.k.a. MEE MEE)
MEI, YAN SHING CHAN, CHEUNG)
YONG, SHING SI SUN, SHEN PING)
CHU, JOHN TAM, SI KIT WU,)
SI HUNG WU, CHUI BAI TAM, and)
JIMMY MOY a.k.a. JIMMY MUI)
a.k.a. JIMMY MEI,)

Defendants.)

DEPOSITION OF WILLIAM TAM
New York, New York
Tuesday, February 26, 2008

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 15170

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1 **W. Tam**
2 A. On the tax return -- you mean -- say
3 again the question.
4 **Q. Did the restaurant corporation ever**
5 **distribute any of its profits to its**
6 **shareholders?**
7 A. No.
8 **Q. Did it make any distribution of its**
9 **income to its shareholders?**
10 A. No.
11 **Q. Did you ever distribute any funds to**
12 **Ben Tom other than the one quarter that he was**
13 **an employee?**
14 A. No.
15 **Q. Were you the holder of the corporate**
16 **records for the restaurant?**
17 MR. McHUGH: Please clarify during
18 which period, if you could.
19 **Q. At any point in time were you the**
20 **holder of the records of the corporation?**
21 MR. McHUGH: When you say "records
22 of the corporation," what are you talking
23 about?
24 MR. KIMERLING: I'm sorry. Thank
25 you.
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1 **W. Tam**
2 **Q. Were you the holder of the share**
3 **books of the shareholders?**
4 A. Well, common practice is that
5 usually they leave the stock book in the
6 accountant's office.
7 **Q. So I take that to mean that you did**
8 **have the stock book in your office?**
9 A. I did have the possession for a
10 certain period.
11 **Q. Did you also possess the corporate**
12 **seal?**
13 A. That is also as a common practice,
14 put it -- I have the whole folder, so the
15 public seal, of course, is there too.
16 **Q. And you say for a certain period of**
17 **time. For what period of time did you hold the**
18 **stock book and the seal?**
19 A. When I surrendered the share -- when
20 I transferred the share to my wife.
21 **Q. That was the end of it?**
22 A. Yes.
23 **Q. 1996?**
24 A. That's correct.
25 **Q. So you didn't have the stock book**
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1 **W. Tam**
2 **after 1996; is that correct?**
3 A. Mee Mee Tom has it.
4 **Q. After 1996?**
5 A. That's correct.
6 **Q. Did you possess the seal after 1996?**
7 A. I believe I have the seal. The
8 corporate book, yes.
9 **Q. I'm sorry?**
10 A. I have the corporate book, because
11 the corporate book is still in my office.
12 **Q. And what do you mean by the**
13 **corporate book?**
14 A. The book, the black binder.
15 **Q. Well, I apologize, but unlike some**
16 **of the other lawyers here I don't represent**
17 **corporations. What is in the black binder?**
18 A. You have -- it's a thick binder.
19 You have the certificate of incorporation there
20 and then you have some minutes, some pages over
21 there.
22 **Q. But the share book was transferred**
23 **to Mee Mee Tom?**
24 A. That's correct.
25 **Q. And in the corporate book are there**
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1 **W. Tam**
2 **any minutes of the corporation that you still**
3 **maintain?**
4 A. I don't have anything right now.
5 **Q. But you still have the corporate**
6 **book in your office currently?**
7 A. No, no more.
8 **Q. What happened to the corporate**
9 **books?**
10 A. When my wife sold the shares, I gave
11 everything back to Mee Mee Tom.
12 **Q. When was the last time you had**
13 **contact with Mee Mee Tom?**
14 A. The day -- December 31st, 2005.
15 Around that date.
16 **Q. And you haven't seen her since then?**
17 A. You are correct.
18 **Q. Do you have any knowledge about**
19 **where she is presently living?**
20 A. No.
21 **Q. Did the corporation have any**
22 **meetings of its board or shareholders during**
23 **the time that you or your wife were**
24 **shareholders?**
25 A. Yes.
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1 W. Tam
 2 Q. Did you attend these meetings?
 3 A. Sometimes they invite me.
 4 Q. Let's talk about that for a minute.
 5 At some point in time you were the secretary of
 6 the board; is that correct?
 7 A. That's correct.
 8 Q. And you resigned in '95, '96? When
 9 did you resign the position as secretary of the
 10 board?
 11 A. July 1st, 1996.
 12 Q. When you transferred your shares; is
 13 that correct?
 14 A. I transferred the shares on January
 15 26th.
 16 Q. So July 1st, 1996 you resigned?
 17 A. That's correct.
 18 Q. Why did you resign as secretary in
 19 July of '96?
 20 A. I don't feel comfortable with the
 21 way Mee Mee Tom run the restaurant.
 22 Q. What, in particular, made you
 23 uncomfortable?
 24 A. Because Mee Mee Tom and Ben Tom did
 25 not get along, as I told you, put me in a very
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1 W. Tam
 2 in '96 when Mrs. Tom became the president you
 3 withdrew as the secretary of the board; is that
 4 correct?
 5 A. Yes.
 6 Q. And you also indicated that you felt
 7 comfortable with Mr. Tom's running the
 8 restaurant, but not with Mee Mee Tom; is that
 9 correct?
 10 A. That's correct.
 11 Q. And that in Mr. Tom's era as the
 12 president he was the person who you saw as the
 13 accountant or board member as running the
 14 restaurant; is that correct?
 15 A. No.
 16 Q. Who ran the restaurant during the
 17 period when Mr. Tom was president?
 18 A. Peter Lee.
 19 Q. And Peter Lee was the general
 20 manager?
 21 A. That's correct.
 22 Q. Who hired Mr. Lee?
 23 A. I don't know. He is the one -- he
 24 was the one who planned the whole thing.
 25 Q. Mr. Lee?
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1 W. Tam
 2 awkward position.
 3 Q. I understand their relationship to
 4 each other was difficult, but you said you
 5 didn't feel comfortable the way that she ran
 6 the restaurant. What was it in the way that
 7 she ran the restaurant that made you
 8 uncomfortable?
 9 A. Well, Ben Tom is my cousin. I trust
 10 him. Mee Mee Tom is not my cousin. I am not
 11 in the office. I am not in the restaurant.
 12 Most of -- almost 99 percent of the time I am
 13 not in the restaurant.
 14 Q. Did you have reason not to trust
 15 her? Is there something that she did that led
 16 you not to trust her?
 17 A. No. Just my intuitive feeling.
 18 That's my feeling.
 19 MR. KIMERLING: Why don't we just
 20 take a short break.
 21 (Recess was taken from 11:18 to
 22 11:31.)
 23 BY MR. KIMERLING:
 24 Q. You testified -- this is just to
 25 refresh both our recollections -- at some point
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1 W. Tam
 2 A. Mr. Lee.
 3 Q. And how do you know that, that
 4 Mr. Lee planned the whole thing?
 5 A. I heard them talking about it.
 6 Q. And by "they," who do you refer to?
 7 Who do you refer to when you said you heard
 8 them talking about it?
 9 A. The shareholders.
 10 Q. Now, during the period that you were
 11 the secretary, did you regularly attend board
 12 meetings of the shareholders?
 13 A. No.
 14 Q. Did you attend any meetings of the
 15 shareholders while you were the --
 16 A. Once in a while they invite me.
 17 Q. How often is once in a while?
 18 A. A couple of times a year.
 19 Q. And where were those meetings held?
 20 A. In Nice Restaurant.
 21 Q. Prior to '96, was Mr. Tom at those
 22 meetings?
 23 A. Yes.
 24 Q. Was his wife, Mee Mee, at those
 25 meetings?

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1 **W. Tam**
2 A. Because my wife is an inactive
3 investor. She never come to the restaurant.
4 **Q. Did you or your wife ever obtain any**
5 **other shares in the restaurant after this**
6 **transfer in January of '96?**
7 A. There was two shares increased from
8 5 to 7, yes.
9 **Q. Was that through a transfer or**
10 **purchase by your wife?**
11 A. Yes. You can see that on the column
12 next to me, Dung H. Leong, he want to be out,
13 so we were forced to buy all their shares.
14 **Q. And so when was that?**
15 A. I can't recall right now. I can't
16 give you accurate answer on that.
17 **Q. Approximately, assuming that you**
18 **transferred your shares in January of '96, how**
19 **much later after that did Mr. Leong transfer**
20 **his shares?**
21 MR. McHUGH: Objection to the form.
22 Assumes it was later.
23 You can answer if you know.
24 A. No, I can't recall. It's too long
25 ago.

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1 **W. Tam**
2 A. I have to go on?
3 **Q. Yes. Thank you.**
4 A. Peter M. Chan.
5 **Q. What was Mr. Chan's position in the**
6 **restaurant?**
7 A. He is the captain.
8 **Q. That's your name. And then after**
9 **your name?**
10 A. Choi Wah.
11 **Q. Was he an employee of the**
12 **restaurant?**
13 A. He is the captain. Wu, Sze Kit.
14 **Q. What was Mr. Kit's position in the**
15 **restaurant?**
16 A. He is the chef.
17 **Q. Is that Damon Lee, was he an**
18 **employee as well?**
19 A. No. Wu Sze Kit. To Ha Lam.
20 **Q. Is that a man or a woman?**
21 A. It is a man.
22 **Q. And Mr. Lam, what was his position**
23 **at the restaurant?**
24 A. Who, To Ha Lam?
25 **Q. Yes.**

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1 **W. Tam**
2 **Q. Your counsel makes an interesting**
3 **time observation. Was it before or after you**
4 **transferred your shares to your wife that**
5 **Mr. Leong transferred his shares?**
6 A. Before.
7 **Q. So your wife bought two shares at**
8 **some time before '96; is that correct?**
9 A. I recall I bought the shares, the
10 two shares, and then the shares were all
11 transferred to my wife on January 26th, 1996.
12 **Q. Do you recall how much you paid for**
13 **Mr. Leong's shares?**
14 A. Same thing, 10,000 a share.
15 **Q. I am going to ask you to look at the**
16 **names in the left-hand column of the**
17 **shareholders and indicate to me which of those**
18 **shareholders also were employed by the**
19 **restaurant.**
20 A. Peter T. Lee.
21 **Q. And what was his position at the**
22 **restaurant?**
23 A. General manager. Right, Mr. Eng?
24 **Q. You could ask him later, but he is**
25 **not allowed to talk to you right now.**

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1 **W. Tam**
2 A. He is also a chef also. Chan, Yan
3 Shing.
4 **Q. Okay. He is the person we**
5 **identified previously as a defendant? Is that**
6 **the same person?**
7 A. Yes.
8 **Q. What was his position in the**
9 **restaurant?**
10 A. He is a manager. And then Mee Mee
11 Tom.
12 **Q. What was her position in the**
13 **restaurant?**
14 A. Mee Mee Tom?
15 **Q. Yes.**
16 A. Is a manager.
17 **Q. Mr. Kit you have already identified.**
18 A. Yes. Wu Shi Xiong. He is a cook.
19 **Q. Okay. Anyone else on this?**
20 A. King Pue Hui, he is a cook. Yung
21 Yam Cheng is a dim sum chef. Wong Wai is a
22 manager, he is captain. Shall I go on?
23 **Q. Yes, please.**
24 A. And then we skip the next one. And
25 then after one the next one is Sun Sheng Xian.

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1 W. Tam
2 or orally?
3 A. Orally.
4 Q. Did you ever ask her for
5 documentation in regard to the hours of the
6 employees?
7 A. That's not my job.
8 Q. She told you their wages; is that
9 correct?
10 A. She told me the hours, she told me
11 the wage.
12 Q. And when you say "the wage," is that
13 their hourly wage or their biweekly --
14 A. Hourly rate.
15 Q. Did she orally provide that
16 information to you or was it in writing?
17 A. Orally.
18 Q. And did you do this in person or
19 over the phone with her?
20 A. On the phone.
21 MR. KIMERLING: Can I have this
22 marked as Plaintiffs' Exhibit 4.
23 (Plaintiffs' Exhibit 4 letter dated
24 April 30, 1996, Bates stamped OT 176
25 through OT 179, marked for identification.)
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1 W. Tam
2 Department of Labor?
3 A. Right on the letter, U.S. Department
4 of Labor.
5 Q. There was a determination that there
6 was a non-payment of overtime; is that correct?
7 A. That's correct.
8 Q. What information, if any, did you
9 provide to the Department of Labor, did you,
10 yourself, provide to the Department of Labor?
11 A. The payroll journal, individual
12 payroll record. Whatever they ask.
13 Q. I show you what was marked as Bates
14 stamp 356. Is this a page of the journal that
15 you referred to?
16 A. Yes, this is a payroll journal, yes.
17 Q. And do you still have copies of that
18 journal other than the ones you provided to me
19 or to your attorney?
20 A. I have the '01 and '02. As I told
21 you before, I gave back '03, '04, '05 to
22 Mrs. Tom.
23 Q. That's correct, I forgot. I
24 apologize.
25 Did you speak to Mr. Tom or anyone
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1 W. Tam
2 Q. I show you what's been marked as
3 Plaintiffs' Exhibit 4. Do you recognize these
4 documents?
5 A. Yes.
6 Q. Can you tell me what they are?
7 A. They are called a Summary of Unpaid
8 Wages.
9 Q. There are several letters in this,
10 one of which is addressed to you; is that
11 correct?
12 A. Which one? The last one. Okay.
13 I'm sorry.
14 Q. And I believe the one on the top,
15 the first one.
16 A. Oh, okay.
17 Q. For the record, these are Bates
18 stamped 176 through 179. They were produced by
19 Defendant Tam.
20 What was your involvement in this
21 matter with the Department of Labor?
22 A. I represent my client.
23 Q. And what was at issue here?
24 A. There is an audit.
25 Q. And the audit was conducted by the
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1 W. Tam
2 else at the restaurant about this audit and the
3 outcome of the audit?
4 A. Yes.
5 Q. Who did you speak to?
6 A. I cannot recollect right now.
7 Q. Do you recall what, if anything, you
8 may have said to representatives of the
9 restaurant?
10 A. This is almost twelve years ago.
11 Q. I understand.
12 A. I can't remember what I said.
13 Q. Okay. Did you talk to anyone at the
14 restaurant about record keeping requirements
15 that are in the letter to you on the last page
16 of this exhibit, Bates stamp 179?
17 A. I don't recall.
18 Q. I note that -- and my copy of this
19 last page is fairly faint, but there is a
20 handwritten check in that letter before the
21 line "time of day and day of week on which
22 employees' workweek begins," that's 5, and
23 number 6, "regularly hourly rate."
24 A. Uh-huh.
25 Q. Do you recall whether you made those
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1 W. Tam
2 check marks?
3 A. I believe so, yes.
4 Q. Did you discuss these particular
5 requirements with anybody at the restaurant?
6 A. I don't recall, as I told you. I
7 don't recall right now. It's twelve years ago.
8 Q. Did you ever check to see whether or
9 not the restaurant was in compliance with this
10 record-keeping requirement at any time after
11 you received this letter in October of '95?
12 A. I did not.
13 Q. Do you know whether or not they were
14 in compliance with this record-keeping
15 requirement?
16 A. I did not.
17 Q. Did you ever see a time clock
18 machine when you visited the restaurant?
19 A. No. They did not have a time clock.
20 Q. Did you ever advise them at any time
21 to install a time clock?
22 A. I did not.
23 Q. Did you ever at any time discuss
24 with anybody whether or not a time clock should
25 be installed?
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1 W. Tam
2 Mee Tom.
3 Q. And who prepared the check itself?
4 A. This is Mee Mee Tom's handwriting.
5 Q. Have you ever seen these checks
6 before you turned them over to your attorney?
7 A. I saw that when I prepared my
8 records.
9 Q. Were the employees at the restaurant
10 paid in cash --
11 A. Yes.
12 Q. -- for their work?
13 A. Yes.
14 Q. Were they paid in cash and check or
15 just cash?
16 A. 99 percent paid in cash.
17 Q. Some workers were paid in check?
18 A. Some they specifically requested to
19 be paid in check and we paid them in check, and
20 Mee Mee Tom paid in check.
21 Q. Looking at the first page of this
22 exhibit, 325 Bates stamp, you will see that
23 there are two checks made out to cash which say
24 for the August 15th payroll. Do you see that?
25 A. Yes.
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1 W. Tam
2 A. I did not.
3 Q. Did you ever tell anybody not to
4 install a time clock?
5 A. I did not.
6 Q. At any time that you were at the
7 restaurant did you ever see a sign-in book or
8 sign-in log of any kind that was maintained by
9 the restaurant?
10 A. In that fifteen minutes I did not
11 see it.
12 MR. KIMERLING: Mark this as
13 Exhibit 5, please, in the William Tam
14 deposition.
15 (Plaintiffs' Exhibit 5, copies of
16 checks, Bates stamped OT 325 through
17 OT 328, marked for identification.)
18 Q. Would you take a look at that
19 exhibit, sir.
20 A. Yes.
21 Q. These are copies of checks that your
22 attorneys have provided me.
23 A. Okay.
24 Q. Do you recognize these checks?
25 A. These are the checks signed by Mee
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1 W. Tam
2 Q. Do you know why Miss Tom prepared
3 two checks for that same payroll?
4 A. That is beyond my control. I don't
5 know. All I did is I gave her the figures.
6 Q. Which figures?
7 A. The total combined. Let's say the
8 payroll total for the period is 12,300. I gave
9 her the figures.
10 Q. And you noted that she divided that
11 into separate checks; is that correct?
12 A. Until when I saw the check, yes.
13 When I saw, you know.
14 Q. Did you advise her to do that to
15 avoid the reporting requirement of the \$10,000
16 cash check?
17 A. No.
18 MR. McHUGH: Objection to the form.
19 It's speculative and improper. I think the
20 witness has answered already.
21 Q. Did you advise her that by dividing
22 her checks she may be trying to avoid
23 disclosure, which would not necessarily be a
24 proper thing to do?
25 MR. McHUGH: Objection to the form.
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